# THE GREATER NEW YORK CHARTER.

## THE FORMATION OF THE CHARTER.

The most important local statute passed within recent years is the charter of the Greater New York, which will take effect on the first of January, 1898. It creates a municipality so large as to present a new factor in the political institutions of the country. For the first time, we have to deal with the government of a great metropolitan city with a population of over three millions. This fact gives to the charter an importance far beyond that of the ordinary municipal charter. It is an experiment which is of interest beyond the limits of New York State. Its success or failure will strongly influence the development of institutions in other parts of the country. The method followed in the formation of the charter is thus a matter of national importance. Not concerning ourselves now with the merits of the principles of municipal government adopted in the charter, let us examine the instrument as a piece of statute-making. Viewed in this light, the work of the commission and the passage of the charter by the state legislature constitute a significant episode in the history of legislation.

The scientific formulation of statutes is a subject which has received but little attention in the United States. The prevailing belief seems to be that the most superficial legal training is all that is required. Those who are more fully acquainted with the subject agree that the formulation of statutes is essentially expert work, and that adequate preparation for it involves long special training. It is of the utmost importance to the community that this work should be well done. The daily life of every member of a civilized community is carried on in conformity to general rules of conduct, embodied in statute law. Every important advance

in science, as well as every marked change in popular sentiment in matters of religion or of morals, gives rise to a new body of laws designed to meet the new conditions. No elaborate argument is needed to prove the necessity of giving and preserving to the large and constantly changing body of statute law the greatest possible coherence, clearness, brevity, and stability. In spite of this fact, our legislatures are wont to pass new laws and to change old laws with a freedom appalling to one who studies the result. The hasty enactment of ill-digested statutes produces great uncertainty in the law, and overburdens the courts with questions which would not arise, were all laws passed with due regard for laws already existing and for scientific arrangement and expression. The recklessness with which statutes are passed is shown by the mere volume of the session laws in the separate states of the Union. The laws passed by the legislature of the State of New York in 1895, cover about 2100 printed pages; and those passed in 1896, about 2600 pages. More than half of these laws, in bulk, are of a special or local character, many of them having been devised to meet some merely temporary or personal need or desire. Only very few were framed after adequate study of the great mass of existing laws upon the subjects treated of. They were drawn by hundreds of men, without regard to any general scheme either as to substance or form. After years of such law-making a state finds its statutes in a condition of almost intolerable chaos. In many cases a remedy is then sought in codification; but codes and revisions are no sooner enacted than they become the subject of innumerable amendments, proposed for the most part with a desire to serve some private end rather than the public welfare.

A result of this method of legislating is seen in the generally accepted theory that if a proposed law is at all desirable, it ought to be passed without delay, notwithstanding probable defects. Future legislatures, it is said, will be

able to perfect the law by amendments, or to repeal it, if it is found unsatisfactory in operation. But, in a certain sense, each successive form of a law is imperishable. The fact that it has been upon the statute books must be learned and reckoned with for all time by the lawyer, the courts, the student, and the historian. The meaning of present law must often be sought in the light of former statutes upon the same subject, and no such former statute may be disregarded by one who seeks to learn precisely what the present law is. Every change in the law is, therefore, an evil. It may be necessary or so desirable that none will oppose it, but, nevertheless, so far as it presents new matter to be interpreted and construed, it is an evil. It follows that good affirmative reason should be demanded for the enactment of any new law. It should be challenged and scrutinized, and the burden of proving that it ought to be passed should be placed upon its advocates.

Applying these general principles to the Greater New York Charter, viewed as a piece of statute-making, we may lay down the following general rules:

1. In the drafting of a statute, one of the first and fundamental processes is to define the terms used, in such a way that their meaning shall be free from doubt and ambiguity. Any particular combination of words should be used throughout a statute with precisely the same meaning, and any difference in expression should indicate a difference in meaning.

2. Beauty of style, harmony of phrase, and elegance of diction have not in themselves any value in a statute. The single effort in the use of language should be to make the meaning clear.

3. Several single simple propositions are clearer than a combination of the propositions in a complex proposition. Therefore, as far as possible, propositions should be stated in separate short sentences.

4. Every effort should be made to reduce to the shortest possible form the provisions to be embodied in the statute.

The volume of laws is growing in this country with such alarming rapidity that brevity is a virtue to be especially sought in the work of statute-making.

5. The precise meaning of every word should be weighed, and no word which is not necessary to the meaning, or which does not have a distinct function in the presentation of the idea, should be used.

6. Specific enumeration of a number of cases in a class, coupled with a general provision of similar import covering all the cases in the class, is not merely unnecessary; it increases the length of the statute, and gives rise to doubt and confusion by suggesting that the cases enumerated are to be treated differently from those not enumerated. Even if all possible cases are included in the several provisions, brevity is greatly promoted by the use of a general provision in place of a number of similar specific provisions.

7. Provisions which are intended to embody affirmative legislation, should be expressed affirmatively, and not in such a way as to make it necessary to evolve the affirmative provision by inference.

8. The statute should not provide for the performance of a duty without making it clear who is charged with the duty.

It is not necessary to present the numerous details of the charter passed by the New York Legislature which violate these principles, and show that the charter fails to meet the simplest requirements of a scientifically constructed statute.

Careful study of both the preliminary draft which was published by the commission in December, 1896, and the final draft, which was published and sent to the legislature in the latter part of February, 1897, lead to the conclusion that the charter presents in a striking manner the evils of our American methods of treating the difficult and important work of statute-making. Other countries may spend much time and money in elaborate inquiries and deep research as steps toward the enactment of important laws. American enterprise and quickness will not brook such old-fashioned

methods. When we want a law, we want it now; we shall want other laws next year. The growth of this tendency is well illustrated by the contrast between the way in which the new charter was constructed and the way in which "The Consolidation Act" was evolved.

On the tenth of June, 1879, the legislature passed a law providing for the compilation and revision of "all special and local laws affecting public interests in the city of New York." The work was to be done by a commission of three, consisting of the corporation counsel of the city of New York, and two others to be selected by him. The corporation counsel, Mr. William C. Whitney, named as the additional commissioners Messrs. George Bliss and Peter B. Olney, and the commission immediately proceeded with its work. The completed compilation was reported to the legislature in 1880. It was contained in two printed volumes of 2156 pages, in which the various laws were arranged in chronological order under general headings, such as "Fire Department," "Taxes and Assessments." At the head of each page and upon the margin were notes indicating the substance of the text. The compilation was accompanied by a chronological list of all statutes included, with references to the pages upon which the statutes were printed. Another table was given, with this heading "Repealed and Superseded Laws, showing the acts and portions of acts coming within the scope of this compilation which are treated as repealed or superseded, and some of the acts by which they are regarded as so repealed or superseded." This table also was arranged chronologically. In addition to the text, the commission presented an index of 170 pages.

The legislature of 1880, perceiving that this compilation led naturally to a further clarification of the laws relating to the city of New York, continued the commission with the duty of making a revision and codification of all such laws. The preliminary form of this revision was submitted to the legislature in 1881. The report which accompanied the draft

stated that the commissioners had sought advice and suggestions from all possible sources, but that more time was needed for perfecting the work, and that, therefore, they did not ask that the legislature should enact the preliminary draft. At length, in 1882, the commission reported the final form of the revision, which was enacted as Chapter 410 of the laws of 1882, under the title, "The Consolidation Act."

Each of the two drafts of the Consolidation Act as reported to the legislature contained full citations of the sources of all the parts, and was accompanied with a full and detailed index.

The contrast between the careful and deliberate work upon the Consolidation Act and the hasty preparation of the Greater New York Charter marks the advance made in recent years in our capacity to formulate the most difficult and voluminous legislation within a time which formerly would have been considered quite inadequate. The Consolidation Act was only a collection and a re-arrangement of laws actually in existence. The commission had only to determine what those laws were. The charter is in part a re-enactment of existing laws; but in many most important particulars, it provides a new form of government. The statement made by the chairman of the commission that the people of the present city of New York would find that under the new charter they were living practically under the same laws as now prevail, requires qualifications in many particulars. If, however, the charter is to be regarded as a mere compilation, it is obviously far inferior to the scientific compilation resulting from the three years of labor by the commissioners first appointed in 1879.

Probably never before was an attempt made to formulate within so short a time a piece of legislation so difficult and complicated as this charter. From the time of the passing of the law creating the commission the opinion has been freely expressed by men conversant with legislation relating to municipal government that within the time allowed, no

body of men could do the work with thoroughness at all commensurate with the importance of the subject. The commission had about eight months, but its continuous work did not extend over much more than half of that time. The commission was appointed on the ninth of June, 1896, under a law requiring it to make a final report by the first of February, 1897. In the early summer it met a few times, and adopted certain general propositions, but no comprehensive plan or framework was formulated. During the summer one member of the commission prepared with great industry the draft of a charter. This was reported to the commission's committee on draft on the twenty-first of September. After that date the committee met from time to time, and at length, on the ninth of December, reported to the commission a complete draft essentially different from the draft made during the summer.

The first eight chapters of this draft were made public by the commission on the twenty-fourth of December, with the announcement that public hearings would begin on the second of January, and would continue for two weeks. During these two weeks additional chapters were given out from time to time, as they were completed; but two or three important chapters were not made public until after the hearings, and the supplemental bills were given out only when the final form of the charter was sent to the legislature and published. Toward the end of its term the commission perceived that it could not complete the draft without much assistance. Accordingly, several lawyers were employed to draw some of the chapters, and some of these lawyers were at work while the public hearings were in progress. After the hearings, the commission found that it would be unable to report the final draft by the first of February, and an extension of time until the twentieth of February was secured from the legislature.

Undoubtedly the commission consulted a number of people, but it may be said that the work was practically carried on

in secret, the public having no information as to its progress, or as to the process by which the commission was arriving at its conclusions upon the many points of public interest involved. Inspection of the dates given above will show that it was impossible for those who were interested to prepare themselves to discuss the draft intelligently at the hearings. It could only be properly considered as a whole and after careful examination. But insufficient time was given for the examination even of the chapters published on the twenty-fourth of December, and the charter as a whole was not before the public until after the termination of the hearings. It was not the policy of the commission to distribute copies of the draft freely, and only a comparatively small number of copies were printed. The final draft, did not become accessible to the public generally until the latter part of February, when it was published by one of the Brooklyn daily newspapers.

Practically without further deliberation, the legislature has now enacted into law this complicated bill of over seven hundred pages, which had been before the public but a few weeks, and the full purport of which is probably not yet understood by any living man. It was reported without one citation of the hundreds of laws which would be amended, repealed, or modified by its passage, and without an index. Its provisions are tantamount to an express statement by the commissioners that they do not know what the existing law is, and that it must be left to the courts and to time to reconcile the charter with other laws affecting the parts of the new city. At the final hearing before the commission on the sixteenth of January, General Benjamin F. Tracy, sitting as chairman of the commission, said that a popular misconception as to the nature of the charter seemed to prevail, that it was not a constitution, but an ordinary statute, which could be amended freely, and that future legislatures could pass such laws as would remedy any defects which might develop in the charter

after it should be enacted. This statement by the chairman of the commission seems to amount to a condemnation of the charter. The first duty of commissioners appointed to deal with a mass of laws such as now applies to the cities of New York and Brooklyn, is to endeavor to remedy the evils resulting from the great confusion into which those laws have fallen, and to present their work in a form which will promiseso me degree of stability. This invitation to continue the mischievous tinkering of local laws indicates that the legislature of 1898 will continue the old process of introducing confusion through amendment upon amendment.

Passing the grave questions of policy presented by the charter, and its innumerable defects in detail which might have been remedied by adequate revision, we may find in the sections dealing expressly with the enormous and confused body of existing laws relating to those political divisions of the state which are to be consolidated, ample warrant for the adverse conclusions indicated above. These features of the charter may be divided into two classes,—the provisions which re-enact existing laws, and those which repeal existing laws.

Throughout the charter are scattered provisions which declare in general terms that large classes of existing laws are to continue in force so far as they are "not inconsistent with the provisions" of the charter. The re-enacting sections cover fifteen or twenty pages in all. They appear, for the most part, to have been drawn without reference to one another, and present great diversity of form. Some of these sections are embraced in single tortuous sentences of about three hundred words.

It is evident, therefore, that the 700 pages of the charter do not truly represent the size of the instrument for the government of the Greater New York. The hundreds of pages of laws re-enacted must be read as part of the charter, with the result that the instrument would be certainly not

less than two thousand pages in extent. What parts of this great body of scattered session laws remain in force because they are not inconsistent with the charter, and what parts are repealed because they are inconsistent with it, each citizen will be compelled to determine for himself. Yet the charter itself contains a section which indicates a ready method of removing the difficulty presented by these re-enacting sections. Section 647, relating to the department of buildings, provides that all existing laws upon the subject of buildings within the city are to continue in force so far as they are consistent with the charter; that the municipal assembly may employ experts to prepare a code of ordinances relating to buildings; and that the existing laws are repealed by the charter, the repeal not to take effect until "such building code shall be established by the municipal assembly."

It is true that the immediate effect of this section will be to leave the law as to the building department in the same state of confusion as that which will prevail in relation to other departments; but the section provides a certain and scientific remedy for the evil, and contemplates the reduction to a simple, clear form, of all the law concerning the department, within a reasonable time. The method pursued in this section is not in contravention of the principle that a legislative body cannot delegate its law-making power. This point was settled by the United States Supreme Court in the recent decision holding that it was constitutional for Congress to pass a law which would take effect only in the event of the arising of a certain state of facts, the President to determine when the conditions upon which the law was to become operative had been fulfilled.

In addition to the re-enacting sections relating to the separate departments, the charter contains the following general re-enacting section:

"Sec. 1610. All the provisions of all acts of the Legislature of the State of New York, including said Consolidation Act of 1882, of a

general and permanent character, relating to the corporation heretofore known as the mayor, aldermen, and commonalty of the city of New York, in force at the time this act goes into effect, which are consistent with this act and its purposes, and which are not revised, and included in or the subject-matter thereof covered by this act, are hereby extended to the city of New York as herein constituted, so far as they are consistent with this act, and are not in their nature locally inapplicable to other portions of the city than the corporation heretofore known as the mayor, aldermen, and commonalty of the city of New York, and the provisions of law thus extended to the city of New York as herein constituted shall apply to said city throughout its whole extent, anything to the contrary notwithstanding contained in the charter of any of the municipal or public corporations or laws relating thereto, which are by this act united and consolidated with the corporation heretofore known as the mayor, aldermen, and commonalty of the city of New York."

In connection with the re-enacting provisions, which are in effect also repealing provisions, must be read the following general repealing sections:

"Sec. 1608. The act of the Legislature of the State of New York, passed July 1, 1882, known as the New York City Consolidation Act of 1882, and acts amendatory thereof, and supplementary thereto, and other acts of the Legislature of the State of New York now in force relating to or affecting the local government of the city of New York, are hereby repealed so far as any provisions thereof are inconsistent with the provisions of this act, or so far as the subject-matter thereof is revised or included in this act, and no further. So far as the provisions of this act are the same in terms or in substance and effect as the provisions of the said Consolidation Act, or of other acts of the legislature now in force relating to or affecting the municipal and public corporations, or any of them herein united and consolidated, this act is intended to be not a new enactment but a continuation of the said Consolidation Act of 1882, and said other acts and is intended to apply the provisions thereof, as herein modified to the city of New York as herein constituted, and this act shall accordingly be so construed and applied.

"Sec. 1609. The mere omission from this act of any previous acts or of any of the provisions thereof, including said Consolidation Act of 1882, relating to or affecting the municipal and public corporations or any of them which are herein united and consolidated shall not be held to be a repeal thereof."

The effect of these sections, with the difficulties of construction which they present, will be to involve the law relating to the city in inextricable confusion, and to render it quite impossible for any authority but the court of appeals of the state to determine the law with any degree of certainty.

Careful inspection of sections 1608 and 1610, will show that a citizen seeking to inform himself as to the law upon any particular point with which the charter deals, will have to answer the following questions:

1. What laws upon this subject, "relating to or affecting the local government of the city of New York," were in force at the time of the passage of the charter?
2. How far are such laws "inconsistent with the provisions" of the charter?
3. How far is the subject-matter of such laws revised in the charter?
4. How far is the subject-matter of such laws included in the charter?
5. How far are the provisions of the charter on the point under consideration the same in terms, or in substance, or in effect, as the provisions of the Consolidation Act?
6. Is the subject-matter under consideration covered by the charter?
7. If not covered by the charter, is it covered by the Consolidation Act?

Ingenuity could readily construct other questions under these sections. The questions formulated above lie upon the surface, and will arise daily, to the confusion of the citizen, the public officer, and the courts. It will be observed that these questions present precisely the same difficulties in construction as have demanded for their settlement in times past the best consideration of our highest courts.

Both the legislature and the governor have seen fit to disregard the emphatic points made against the deliberate wrong involved in the adoption of a fundamental law for the great new community open to these grave objections.

The view that it was more important to have Greater New York as soon as possible, rather than bring the city into being under conditions as favorable as time and deliberation could make them, has prevailed. To many it seemed a much smaller evil to continue the present local governments for two or three years, with all their defects, than to plunge an immense new municipality into the legal chaos which, as experience plainly teaches, may be expected to follow the enactment of the charter in its present form.

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